



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 1, 1998

Mr. John Steiner
Division Chief
City of Austin
Law Department
P.O. Box 1546
Austin, Texas 78767-1546

OR98-1572

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116259.

The City of Austin (the "city") received a request for various documents concerning a sexual assault. You indicate that you have responded to certain portions of the request and now submit the remaining issues to this office for consideration. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. Specifically information which identifies or would tend to identify a victim of a serious sexual offense may be withheld under common law privacy. Open Records Decision No. 393 (1983). Consequently, you must redact any information which identifies or would tend to identify the victim in the instant case which also includes any detailed description of the assault unless this information is contained in public court records. *Star-Telegram, Inc. V. Walker*, 834 S.W.2d 54 (Tex. 1992).

We also recognize that the information contains confidential medical records. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects

from disclosure “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include medical records access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA.

Additionally, we note the presence of a license number in the materials submitted. Although you assert the applicability of section 552.101, which protects from disclosure information made confidential by other law, we think that the appropriate exception to assert for driver’s license numbers is section 552.130 of the Government Code, which provides:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of the state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

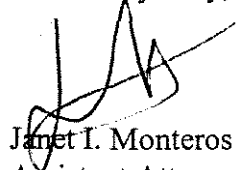
(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Since it does not appear that this driver’s license number is subject to release to this requestor under chapter 730, it is protected from disclosure under section 552.130.¹

¹Additionally, we note the presence of social security numbers in the documents submitted to this office. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref.: ID# 116259

Enclosures: Submitted documents

cc: Mr. David L. Botsford
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(w/o enclosures)